

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:13 CR 58-1**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
MARK VALENTINE,)	
)	
Defendant.)	
_____)	

THIS CAUSE coming on to be heard before the undersigned upon a Violation Report (#11) filed by the United States Probation Office on March 16, 2015 alleging that Defendant had violated terms and conditions of his prehearing release. At the call of this matter on for hearing it appeared that Defendant was present with his counsel, William Loose, and the Government was present through Assistant United States Attorney, David Thorneloe. From the evidence offered and from the statements of the Assistant United States Attorney and the attorney for the Defendant, and the records in this cause, the Court makes the following findings.

Findings: At the call of this matter, Defendant, by and through his attorney, admitted the allegations contained in the Violation Report.

On January 7, 2015 a Petition was filed by the United States Probation Office alleging that Defendant had violated terms and conditions of his supervised release.

On January 9, 2015 the undersigned held a detention hearing and entered an Order (#7) releasing Defendant on terms and conditions of prehearing release. The undersigned further set conditions of release which included the following:

(1) The defendant must not violate any federal, state or local law while on release.

(8)(p) Defendant is to refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

On March 7, 2015, Defendant submitted to a urinalysis drug test and tested positive for the use of marijuana.

Discussion. 18 U.S.C. § 3148(b)(1) provides as follows: The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer

(1) finds that there is----

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that ---

(A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community.”

Based upon the evidence and the admission of Defendant, the undersigned finds there is probable cause to believe Defendant committed a state crime while on release. The Defendant had to possess marijuana in order to consume it and thus committed a state misdemeanor. N.C.G.S. § 90-95

There has further been shown by clear and convincing evidence that Defendant violated the condition of release that ordered him to refrain from unlawful use or possession of a narcotic drug unless it was prescribed by a licensed medical practitioner. Defendant has violated this condition by possessing marijuana which is a drug which is not prescribed by a licensed medical practitioner.

A proffer was presented by counsel for Defendant showing that Defendant is actively involved in an Associates Degree program at a local community college. Defendant is midway through the third semester of a four semester program that will lead to an Associates Degree. At the present time, Defendant has a 3.8 GPA and hopes to complete his third semester by the end of May 2015.

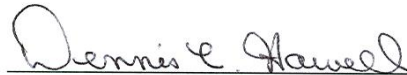
Having considered the arguments of counsel for Defendant and the arguments of the Government, it appears there are conditions or combination of conditions of

release that will assure that Defendant will not pose a danger to the safety of any other person or the community. It is the opinion of the undersigned that based upon Defendant's actions, it is likely Defendant will abide by any condition or combination of conditions of release that will assure that Defendant will not pose a danger to the safety of any other person or the community. The Court finds, based upon Defendant's school work and his participation in drug treatment, it is likely that Defendant will abide by the terms and conditions of release previously entered, in the future. As a result of the above referenced findings, the undersigned has determined to enter an order allowing Defendant to be released on the same terms and conditions of release previously issued in this matter.

ORDER

IT IS, THEREFORE, ORDERED that the Defendant be released on the previous terms and conditions of pretrial release (#7) entered in this matter. Defendant is cautioned that should he have further positive drug test and a violation report is filed, the Defendant should not expect the same results in the future.

Signed: March 23, 2015



Dennis L. Howell
United States Magistrate Judge

